

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: McHale et al.	:	
	:	
Serial No.: 09/993,243	:	Examiner: E. Gort
	:	
Filed: November 6, 2001	:	Group Art Unit: 3627
	:	
For: <i>System and Method for Serving</i>	:	
<i>Patrons of Restaurants and Bars</i>	:	

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REPLY BRIEF OF THE APPELLANT UNDER 37 C.F.R. § 41.41

COMES NOW Appellants and submit this reply brief to the U.S. Patent Office Board of Patent Appeals and Interferences under 37 C.F.R. §41.41 in response to the Examiner's Answer filed February 27, 2007.

The Examiner has taken a broad interpretation of several claim elements, including "advertisement selection program" and "central server" in order to use the Ragsdale reference as anticipating prior art. The Examiner's interpretations are based upon reading the claim terms in a vacuum. One of the most basic tenets of proper claim construction is that the "the person of ordinary skill in the art is deemed to read [a] claim term not only in the context of the particular claim in which [that] term appears, but in the context of the entire patent, including the specification." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005)(en banc). In the present case, the application is a continuation-in-part of application serial number 09/613,117 filed July 10, 2000. The specification of the present application incorporated by reference the entire specification of the parent application, and thus interpretation of the claim terms must be made in light of both the new subject matter and the disclosure of the parent application.

It is important in understanding the present invention, how the claimed invention improved upon the disclosure of the parent application. On page 4 of the present application, the parent application is discussed briefly beginning at line 31:

“In the parent application, a beverage delivery system is disclosed which allows a patron to pour his/her own drink order directly from a station at his/her table without the intervention of a server or bartender. A display screen within each of the stations displays the beverage ordered and the amount of beverage dispensed. As part of this invention, the inventor discloses that the system can be in communication with a global computer network, such as the Internet. Through this network connection, the system can electronically present on each display screen information such as advertisements, news, images, e-mail, web pages, and other various types of useful information to patrons using the system.”

The present application goes on to describe that the present invention improves upon the disclosure of the parent application by “allowing an advertiser to flexibly target its advertisements to patrons of establishments with an interactive patron service system.” (p. 5, ll. 10-12). This allows makes the system more “economically feasible because [it] will no longer add to the overhead of an establishment but rather generate income in and of themselves through advertising revenue.” (p. 5, ll. 16-18). It is the use of a specific advertisement selection program that allows “a practitioner of the present invention to tailor the invention such that virtually any advertising scheme desired by an advertiser can be implemented.” (p. 6, ll. 10-12).

“For example, when a particular patron station receives order input corresponding to an order of chicken wings, the software can be designed such that the establishment server will select a beer advertisement to be sent to the that particular patron station for display thereon. At the same time, another patron station may receive order input corresponding to an order of a steak. The software can be designed to select an advertisement for the local butcher shop for display on that patron station.” (p. 6, ll. 17-25).

The Examiner has construed Ragsdale as including an advertisement selection program because the “system inherently has a program to run the advertising selection in order for the patron to view the photo-images of menu items which Examiner is construing to be advertisements.” (Examiner’s Answer at 4). The Examiner has also construed the term central

server to encompass the Internet, which is disclosed in Ragsdale as being an alternative source for images.

Using the Examiner's reasoning, the parent application provides support for both an advertisement selection program and a central server. The support in the parent application can be found in the specification on page 11, lines 15-20:

"Another feature of the present invention is that it can be in communication with a global computer network such as the Internet for receiving information such as advertisements, news, images, e-mail, web pages, and various other types of information useful for consumers while they dine. The information received through the global computer network is displayed upon the display screen 30 for the consumer to view during dining."

Because the parent application (filed July 10, 2000) predates the effective date of Ragsdale as prior art under 35 U.S.C. § 102(e) (April 4, 2001), Ragsdale is not a proper reference for any claims of the present application that are entitled to an effective filing date from the parent application. Using the Examiner's broad interpretation of the terms "advertisement selection program" and "central server" that are required for the claims to read upon Ragsdale, those same claims would be supported by parent application, and thus Ragsdale would be an improper reference under § 102.

By way of example, Appellants submit herewith Appendix A, comprising a claim chart demonstrating the support in the parent application for all of the elements of claim 1 of the present application. Accordingly, Appellants take no position on the proper scope of the terms of its claims as part of this appeal. If the Board decides the narrower interpretation of "advertisement selection program" and "central server" are appropriate, then Ragsdale does not anticipate. Conversely, if the Board takes the view that such terms should have a broader meaning, then the claims are entitled to an earlier effective filing date and Ragsdale is no longer prior art.

For the reasons stated above, Appellants respectfully submit that the claims presented in this appeal are patentable over the prior art. Appellants respectfully request that the rejections of the appealed claims be reversed and the claims allowed.

Applicant is filing concurrently herewith a Request for Oral Hearing before the Board on this appeal.

Respectfully submitted,

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APPENDIX A

Support for Claim 1 in Application No. 09/613,117

Claim Language	Support
A patron service system for serving at least one patron of an establishment, said system comprising:	
at least one patron station located in said establishment	station (20), p. 9, lines 4-9
and configured to electronically display a plurality of menu items and electronically display at least one advertisement thereon,	display screen (30), p. 10, lines 15-16; p. 11, lines 15-18
each patron station also being configured to receive order input from a patron corresponding to an order of at least one of said menu items;	p. 10, lines 15-16
an establishment server in communication with each patron station,	control unit (40), p. 9, lines 4-9
said establishment server comprising (1) a database for storing a plurality of advertisements and (2) an advertisement selection program for selecting which of said stored advertisements are to be communicated to said at least one patron station for display thereon,	system inherently has a program to run the advertising selection in order for the patron to view the photo-images of menu items which Examiner is construing to be advertisements; p. 11, lines 15-20
said establishment server being configured to (1) receive and process said order input for later fulfillment of said order, (2) execute said advertisement selection program, and (3) communicate the advertisement selected upon execution of the advertisement selection program to said at least one patron station for display thereon; and	p. 11, line 23 - p. 12, line 3; p. 11, lines 15-20
a central server in communication with said establishment server, said central server being configured to communicate at least a portion of said advertisement selection program to said establishment server.	p. 11, lines 15-20 disclose "the accessing of image databases via the Internet, and therefore, inherently, a server must exist in order for these image databases to be saved upon and to allow the ability to communicate them via the Internet" (see Examiner's Answer at 17)